

ENVIRONMENTAL QUALITY COUNCIL

January 8, 1998

Original Minutes with Attachments

COUNCIL MEMBERS PRESENT

Rep. Vicki Cocchiarella, Co-Chair
Sen. Ken Mesaros, Co-Chair
Rep. Haley Beaudry
Sen. Vivian Brooke
Sen. William Crismore
Rep. Kim Gillan
Sen. Lorents Grosfield
Rep. George Heavy Runner

Sen. Bea McCarthy
Rep. Karl Ohs
Rep. William Tash
Ms. Julie Lapeyre
Mr. Bill Snoddy
Mr. Jerry Sorensen
Ms. Jeanne-Marie Souvigney
Mr. Gregory Tollefson

STAFF MEMBERS PRESENT

Mr. Todd Everts
Ms. Kathleen Williams

Ms. Martha Colhoun
Mr. Larry Mitchell

VISITORS' LIST

Attachment #1

COUNCIL ACTION

- No action was taken.

I. CALL TO ORDER AND ROLL CALL

CO-CHAIR MESAROS called the meeting to order at 7:00 p.m. Roll call was noted; all members were present. (**Attachment #2**)

II. MEETING PROCEDURE AND PROCESS

a. Opening Remarks on Meeting Procedure - Co-Chairs

CO-CHAIR MESAROS explained that the EQC had recessed a subcommittee to provide a forum for the Governor to report to the EQC and the public to disclose the results of his investigation into the allegations concerning Department of Environmental Quality (DEQ) public disclosure issues. This presentation was supplemental to Director Mark Simonich's report to the full EQC scheduled for the next day. This was to be

an informational meeting and not a hearing. No decisions would be made by the Council. The Council would not address issues which concerned an individual's personality or job performance.

CO-CHAIR COCCHIARELLA emphasized that the EQC is a bipartisan legislative committee which includes public members. Due to this evening's time frame, some persons may not be able to participate. She asked that the Council be provided written comments and invited the public to the EQC meeting the next day. There would be a time for public comment following Director's Simonich's report and an open microphone session was scheduled in the afternoon.

CO-CHAIR COCCHIARELLA read the EQC Public Participation Guidelines, **Exhibit 1**.

b. Legal Considerations - Mr. Everts

MR. EVERTS stated that under the Montana Constitution and Montana statutory and case law, the Council is required to carefully balance the necessity for individual privacy with the demands for public disclosure. The right to privacy includes the right not to have a person's individual job performance or personality raised in a public meeting unless that person specifically waives that right. If a privacy right isn't raised by the individual, public entities like the EQC, the Governor, and the DEQ, have an obligation to raise that on behalf of the individual. If a privacy issue is raised during the course of this meeting, the co-chairs will stop the meeting.

III. HONORABLE GOVERNOR MARC RACICOT'S REPORT TO THE COUNCIL

Governor Marc Racicot stated he was responding to one portion of the Council's concerns in relation to the DEQ which was the resignation of the communications officer from her position within the DEQ. He interviewed Ms. Siegner on November 13, following her resignation of November 12. She requested that Bob Anez, an Associated Press reporter, be present during the interview. Three reporters were present at the interview with the knowledge and consent of Ms. Siegner. Immediately following the interview and in the presence of the same reporters, **Governor Racicot** interviewed DEQ Director Mark Simonich and Deputy Director Curt Chisholm.

Governor Racicot presented his written testimony to the Council, **Exhibit 2**. He explained the report of his investigation had been supplied to the Council and would be available to any member of the public. In addition, a file copy of all the documents and notes are contained within a central file which is open to public inspection. His presence before the Council this evening is at the request of the Council to answer a question and address the central issue of whether or not the allegations, as presented to him, are true. His anticipation

was that the Council desired him to go through each of the allegations. He stated he would summarize each allegation and finding with the understanding that the members of the Council and the public have the right to ask further questions of him.

Allegations of Circumventing Public Scrutiny

Allegation: Ms. Siegner alleges in her letter of resignation and list of specific allegations that Director Simonich and/or Deputy Director Chisholm had an environmental impact statement kept in Denver so that the public would not have access to it. Thereafter, when interviewed, Ms. Siegner stated that although she did not know if either Director Simonich or Deputy Director Chisholm knew about this situation, DEQ employee Mike DaSilva had informed her it had occurred.

Finding: Ms. Siegner presented two different versions of this allegation that contradict one another. Director Simonich and Deputy Director Chisholm informed Governor Racicot that neither of them have knowledge of such an instance. There was no evidence discovered that establishes or suggests that this allegation is true and Mr. DaSilva denies ever making the statement attributed to him by Ms. Siegner.

Allegation: Ms. Siegner alleges that Jim Robinson told her Deputy Director Chisholm instructed TerraMatrix to withhold a draft environmental impact statement budget to keep it from the press.

Finding: Mr. Robinson has no recollection of having made such a statement to Ms. Siegner, and several other DEQ employees and representatives of TerraMatrix deny this ever happened.

Allegation: Ms. Siegner alleges Deputy Director Chisholm ordered all mail from TerraMatrix to be sent to him instead of being copied to others in DEQ to avoid leaks to the media. Ms. Siegner refused to name her source for this information.

Finding: Leona Holm, who opens, copies and routes all of the mail that comes to the DEQ Director's Office, says she has never received such a directive from Deputy Director Chisholm or Director Simonich, and that such correspondence has been and continues to be distributed and copied to a number of people both inside and outside DEQ.

Governor Racicot remarked that one of the duties which Leona Holm had was to copy and distribute all of the mail and to make certain that a central file within DEQ was available to the public for review. He examined all the correspondence which TerraMatrix sent to DEQ for a period of days and weeks prior to the letter of resignation. It is frequent and typical for the correspondence to be addressed to three different persons in three different state and federal agencies and simultaneously copied to 18 different people including six within DEQ. Obviously, the correspondence which was sent to the DEQ from TerraMatrix was not addressed to Curt Chisholm.

Allegation: Ms. Siegner alleges that Deputy Director Chisholm attempted to keep Jim Robinson from talking to the press on the proposed McDonald Gold project about virtually anything other than strictly technical matters.

Finding: Deputy Director Chisholm and Mr. Robinson agree that he was advised to confine his comments to factual and technical information and to refrain from addressing larger policy questions that were Director Simonich's responsibility. In doing this, Deputy Director Chisholm was actually following the advice of Ms. Siegner herself in two detailed memos to the Director. There is no evidence of an effort to circumvent public scrutiny.

Governor Racicot further remarked that Ms. Siegner, in a memorandum to Director Simonich on June 14, 1995, recommended that this practice be implemented at DEQ. Ms. Siegner followed up with another memorandum to Director Simonich and Deputy Director Chisholm two years later, on June 30, 1997, in which she stated that it had become apparent that DEQ needed a formal department-wide media contact policy. In that memo she noted that some people at DEQ were ignorant about how to handle reporters and some barged right in and provided quotes. As a result, Ms. Siegner recommended that for fairly routine issues, technical staff should be able to answer most questions. However, she urged that when a subject had department-wide ramifications and carried a potentially big public impact, they needed to stress that staff members must refer the call to one of two designated persons. There should be no exceptions. A little over four months after Ms. Siegner had, for a second time, recommended that technical staff be admonished to address only routine issues, she alleged that Deputy Director Chisholm was circumventing public scrutiny.

Allegation: Ms. Siegner alleged that on several occasions during the weeks prior to her resignation, media inquiries to Deputy Director Chisholm and Director Simonich were met with irritated responses such as, "How do you know that?" or "Where did you get that?" Ms. Siegner named Erin

Billings and Mike Dennison as two reporters who had expressed concern to her about these alleged responses which allegedly occurred on several occasions over several weeks preceding her resignation.

Finding:

- 1) Erin Billings says she never expressed such a concern to Ms. Siegner nor was she asked by either Director Simonich or Deputy Director Chisholm, "How did you know that?" or "Where did you get that?"
- 2) Mike Dennison says he never expressed a concern to Ms. Siegner about Director Simonich nor was he asked by Director Simonich, "How did you know that?" or "Where did you get that?"
- 3) On one occasion, not several, prior to Ms. Siegner's resignation, when Mike Dennison asked Deputy Director Chisholm about a resignation letter submitted by Alan Czarnowsky, Deputy Director Chisholm asked Mike Dennison, "Where did you get that?"
- 4) On another occasion, prior to Ms. Siegner's resignation, when Mike Dennison talked with Deputy Director Chisholm about the reorganization of the Impact Assessment Bureau, Deputy Director Chisholm asked Mike Dennison which individuals he had spoken to in DEQ and what Ms. Siegner and others in DEQ had told him. At this point, Mike Dennison did tell Ms. Siegner that Deputy Director Chisholm appeared to be more interested in knowing how he (Mike Dennison) found things out rather than answering questions.
- 5) The day Ms. Siegner resigned Mike Dennison called Deputy Director Chisholm because he had what he called a pretty hot resignation letter pertaining to Ms. Siegner's resignation. Mike Dennison called Deputy Director Chisholm approximately two hours after Deputy Director Chisholm had received the letter from Ms. Siegner. When asked by Mike Dennison about the letter, Deputy Director Chisholm asked, "Where did you get that?"
- 6) Mike Dennison related that he had never been misled by Director Simonich or Deputy Director Chisholm.

Governor Racicot stated he did not find that there was any effort to circumvent public scrutiny. It appeared to him to be entirely predictable that when asked by a reporter about a matter within your jurisdiction, a person, on occasion, may instinctively ask the source of that information. That does not amount to an effort to circumvent public scrutiny.

Allegations of Spin-Doctoring or Truth-Twisting

Allegation: Ms. Siegner accused Director Simonich and Deputy Director Chisholm of "spin doctoring" and "truth-twisting" because they recently praised the work of another employee who was not promoted a year ago during a major department reorganization.

Finding: The employee's personnel file reveals 18 letters of commendation, certificates of appreciation and promotions. According to fellow employees, as well as Director Simonich and Deputy Director Chisholm, the employee is an excellent one who displays competence and professionalism.

Allegation: Ms. Siegner accused Director Simonich and Deputy Director Chisholm of "spin-doctoring" and "truth-twisting" because the Director and Deputy Director blamed a TerraMatrix employee for postponing a scheduled EIS meeting after they had previously praised the TerraMatrix employee's capabilities.

Finding: Neither the TerraMatrix employee nor anyone else was "blamed" for a postponement of the meeting.

The meeting had been postponed simply because they were trying to coordinate the participation of 70 professional specialists from around the country who could not respond within three weeks time and be present for the meetings in the beginning of October. As a consequence, TM personnel recommended that the meeting be postponed until November. It was, in fact, postponed until November with the agreement of the lead agencies, contractors and applicant. The 70 professional experts were present and they proceeded with the continuation of that particular meeting.

Allegation: The Director and Deputy Director were not willing to disclose matters of interest to the press and the public unless and until they were ready to do so, specifically a draft MEPA policy.

Findings: The fact is there was no draft MEPA policy, as this Council knows. As a result, there was no draft policy to disclose. By her own description in a memorandum of November 21, 1997, Ms. Siegner acknowledges that the MEPA policy project had not yet produced a draft, that DEQ was still at the "butcher paper" stage of getting ideas down.

Governor Racicot further commented that there were significant details included in his written report which had been presented to the Council this evening for the first time. His conclusions were the result of a detailed inquiry. There is no speculation offered as to why these unsubstantiated allegations were made. He believes that government is all of us individually and collectively. There is no government on the planet more open than that in the state of Montana.

Although there are many more successes than failures in government, good news about government is just not news. As a result, mistakes in an open government are plain and obvious, while successes often go unnoticed.

In fiscal year 1997, the people in DEQ addressed issues associated with air quality, hazardous wastes, solid wastes, drinking water, junk vehicles, major facility sitings, hard rock mines, coal mines, opencut mines, water permits, subdivisions, underground storage tanks and abandoned mines. Among many other responsibilities, the agency performed 1,833 environmental assessments and 2,851 inspections, while processing 3,693 permits, monitoring 2,333 underground storage tank facilities with 5,938 underground storage tanks, addressing 187 state superfund sites, and responding to 882 enforcement complaints.

Governor Racicot believed that the environment on the debate on the environment had become polluted by emotion and inaccuracies. It has become colored by suspicion, cynicism, competition, obstructionism and intentionally divisive debate. Our society is quite properly governed by laws which have set out the rules by which our special state's sensitive environmental decisions are to be made. Undemocratic decisions can not be made right simply because they might be well-intentioned and cheered for a day. Our society is not and should not be governed by whomever has the most political juice on any given day.

Our laws on the books today set science as the determining factor for environmental regulatory decision. Our state government is manned by people with myriad skills and good intentions. They work very hard, often under trying circumstances and close public inspection. Such inspection is proper. When unleashed with the emotions of the moment such intense commenting and public maneuvering can come to resemble more

harassment by special interests on all sides cloaked in the garb of goodness and more concerned with winning and vindicating their case on a public stage than with actually improving the environment that we all share.

Governor Racicot stated he would like this Council to continue to openly and honestly follow the law.

IV. QUESTIONS FROM COUNCIL MEMBERS

SEN. BROOKE suggested that the meeting time be extended to allow for more public participation.

CO-CHAIR MESAROS stated there would be appropriate time allowed for public comments.

REP. HEAVY RUNNER asked if Ms. Siegner would be addressing the Council this evening. He wanted to hear both sides of the story.

CO-CHAIR COCCHIARELLA stated she had spoken with Ms. Siegner and was not sure if she planned to speak this evening. The opportunity to speak at Council meetings is provided to everyone. This is not a hearing. The Council is not interested in cutting off her rebuttal, if she is interested in doing so. The Council does not wish to put her on the spot if she does not plan to speak.

MS. SOUVIGNEY asked **Governor Racicot** whether he shares the notion expressed by the public that the DEQ is riddled with an undercurrent of dissatisfaction and is not committed to enforcing the law.

Governor Racicot stated that he shared the notion that this is an extremely difficult business that involves an extraordinary amount of pressure being placed upon employees because of the daily competition by constituent groups for decisions before those who work in this particular department. In his view, all of those who have a right to expect competent performance should also proceed with an understanding that the employees work diligently to comply with the law as well as live up to the expectations that the people of this state have a right to expect. With the possible exception of the Department of Corrections, he doesn't believe that there is a state agency which requires any more of its employees, in terms of being durable and capable of withstanding extraordinary stress and demand, than the DEQ. He has never indicated to the DEQ, or any other department which has regulatory authority, what decision to make. He has explained that the law requires these departments to go through a careful process, to make thorough scientific inquiry, and to make a judgment which complies with the law. The willingness of people to opportunistically seize any moment to take advantage of a situation is what leads to the pressure inside the DEQ. The debates about regulatory

enforcement in this state have become polluted because people are competing without regard to good manners or with an inclination to make certain that we are protecting the environment.

SEN. BROOKE, referring to the fifty hours of employee interviews the governor had conducted, asked what guarantee the employees had of no retribution or negative impact upon their job if they talked frankly about the situation. She had a bill in the 1997 Legislative Session which would have provided those employees protection in this instance. It passed the Senate but was killed in the House. She was concerned that there was a lot of influence from the DEQ to kill the bill. She questioned the validity of the information obtained from the employee interviews.

Governor Racicot stated that was a cynical view. They are charged by law to make certain that they produce the truth. The truth has no adverse ramifications for anyone. He encouraged her to talk to the same employees. There were a number of directors, specifically the Director of the Department of Administration, who saw the above-mentioned legislation as a duplication of other procedures and processes which afforded adequate protection for employees. This legislation would invite litigation and cause more problems than it would solve.

V. PUBLIC COMMENT

Jim Jensen, Executive Director of the Montana Environmental Information Center, stated that the Council had heard a very well articulated side of the story. It was, however, one side of the story. His staff has had experiences which are diametrically opposed to the findings which the Governor has given. He does not know why these examples were not incorporated into his investigation because they were specifically identified in the allegations made which are the subject of this meeting.

Bonnie Gestring, MEIC staff person, spent many hours at the DEQ attempting to find specific correspondence between Morrison/Maierle Corporation and the DEQ. There was no copy made by the person who opens the mail to be placed in a public file. After days of inquiry, a copy of this correspondence was discovered in the Director's office. This does not comport with findings but it does support the allegations made by Ms. Siegner.

A controversial EIS has been recently released on the ASARCO Rock Creek Mine. One of the professional consultants hired by the state to provide scientific analysis for that document discovered that after their analysis was provided to the Department, it was changed to reverse the finding. The consulting firm ended up

having to hire an attorney in order for the DEQ to allow their scientific finding to be published in the EIS. The finding was reversed in a way to be favorable to the mining company.

The Governor has expressed his abhorrence to any interest expressing its power to the detriment of other interests in the state. That is exactly what the mining industry has done and he has played an important role in complying with them. It is because Montanans freely express their views and criticize the government and elected officials, that we have an open and free place to live. Additional handout - **Exhibit 3.**

Kevin Keenan, Montana Public Employees for Environmental Responsibility, provided a historical perspective to the events at the DEQ leading up to and including Cathy Siegner's resignation. He stated that the issues eloquently raised by Ms. Siegner and eloquently disputed by Governor Racicot, are the most recent manifestation of a broad based, decade old course of conduct within the Montana Departments of Health & Environmental Sciences (DHES) and Environmental Quality (DEQ), most succinctly described as the manipulation of information presented to the public and the manipulation of basic environmental protection regulatory functioning by the supervisory and management staff of the Departments.

CHAIRMAN MESAROS asked **Mr. Keenan** to refrain from personalizing his testimony.

Mr. Keenan read his written testimony into the record which is attached to and made a part of the minutes as **Exhibit 4.**

Rick Valois, Environmental Rangers, stated that he has taken an oath to uphold what is just, respect the land and defend the defenseless. He agreed with **Governor Racicot** that democracy is one of man's greatest ideas. He disagrees that it is wrapped around the principles of law. Germany had a lot of laws 60 years ago. Democracy is only as good as the integrity which is brought to it. He put his faith in Cathy Siegner's integrity.

Governor Racicot stated that if the Council had questions concerning the issues raised by **Mr. Jensen** or **Mr. Keenan**, he and/or the Department would respond.

The Council recessed at 8:18 p.m.